Mohd Saupi bin Hj Pakeh Amin & Anor v Rushdi bin Aminuddin

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S-22–518 OF 1997
HUE SIEW KHENG J
10 FEBRUARY 2012

Civil Procedure — Amendment — Application to amend — Defendant's name incorrect since commencement of suit — Application to amend defendant's name — Judgment and order entered — Whether amendment necessary

The court had allowed the plaintiff's claim against the defendant and the plaintiff obtained an order of the SAR for quantum of damages. However, a search at the Jabatan Pendaftaran Negara ('JPN') by the plaintiff later revealed that the defendant's correct name was Mohamed Rushdi @ Rushdi bin Pakeh Amin and not 'Rushdi bin Aminuddin', the name which was cited since the suit was instituted in 1997. In the present application, the plaintiff applied to amend the judgment and order to reflect the correct name of the defendant. The plaintiff contended that the application to amend was necessary to express the intention of the court, which was to allow the plaintiffs' claim against the defendant.

Held, allowing the application:
This application was necessary to reflect the defendant's correct name as appearing in the National Registration Department as the clear intention of the court was to render judgment against the defendant. The mistake as to his correct name was in no small measure attributable to the defendant's own omission to make full disclosure or object to the error in respect of his name. He had from the various affidavits filed in the suit referred to himself as 'Rushdi Bin Aminuddin' and described himself as the son of 'Haji Pakeh Amin @ Haji Aminuddin Bin Yusuf'. As far as the court was concerned, there was no error in the person of the defendant sued — the defendant appeared in person and defended the suit against him. The parties were related and there was no issue of mistaken identity as the defendant was the stepson of the second plaintiff (see para 7).

[Bahasa Malaysia summary

Mahkmah membenarkan tuntutan plaintif terhadap defendan dan plaintif memperolehi perintah TKP untuk kuantum ganti rugi. Walau bagaimanapun, pencarian di Jabatan Pendaftaran Negara ('JPN') oleh plaintif kemudiannya menunjukkan bahawa nama betul defendan adalah Mohamed Rushdi @

Rushdi bin Pakeh Amin dan bukan 'Rushdi bin Aminuddin', nama yang dirujuk semenjak guaman tersebut dimulakan pada tahun 1997. Dalam permohonan ini, plaintif memohon untuk meminda penghakiman dan perintah untuk mencerminkan nama betul defendan. Plaintif berhujah bahawa permohonan untuk meminda adalah perlu untuk menjelaskan niat mahkamah, yang mana untuk membenarkan tuntutan plaintif terhadap defendan.

Diputuskan, membenarkan permohonan:
Permohonan ini adalah perlu untuk mencerminkan nama betul defendan seperti yang tertera di dalam JPN sebagai niat jelas mahkamah untuk memberikan penghakiman terhadap defendan. Kesilapan terhadap nama betulnya bukan disebabkan oleh ketinggalan defendan sendiri untuk membuat pendedahan penuh atau membantah kepada kesilapan berkaitan namanya. Dia telah daripada pelbagai afidavit yang difailkan di dalam guaman merujuk kepada dirinya sebagai 'Rushdi Bin Aminuddin' dan mengambarkan yang dirinya sebagai anak 'Haji Pakeh Amin @ Haji Aminuddin Bin Yusuf'. Mahkamah hanya mengambil kira, tidak terdapat kesilapan terhadap orang yang disaman oleh defendan — defendan hadir mewakili dirinya sendiri dan mempertahankan guaman tersebut terhadap dirinya sendiri. Pihak-pihak mempunyai hubungan dan tidak terdapat isu salah orang memandangkan defendan adalah anak diri plaintif kedua (lihat perenggan 7).]

Notes

For a case on application to amend, see 2(1) *Mallal's Digest* (4th Ed, 2012 Reissue) para 593.

Cases referred to

Hock Hua Bank Bhd v Sahari bin Murid [1981] 1 MLJ 143, FC (refd)

Legislation referred to

Rules of the High Court 1980 O 20 r 11

Nanthini Nair (Idris & Partners) for the plaintiff and on behalf of the defendant.

Hue Siew Kheng J:

DECISION (ENCLOSURE 77)

[1] Enclosure 77 is the plaintiff's application to amend the judgment dated 10 August 2004 and order dated 30 September 2010 to reflect the correct name of the defendant. The judgment that was obtained on 10 August 2004 was after full trial wherein the court had allowed the plaintiffs' claim against the defendant. The order dated 30 September 2010 was the order of the SAR in respect of quantum of damages awarded.

[2] Pursuant to a search at the Jabatan Pendaftaran Negara ('JPN') by the plaintiff it was discovered that the defendant's correct name is Mohamed Rushdi @ Rushdi bin Pakeh Amin @ Aminuddin.

[3] Since the time the suit was instituted from 1997 till the search result as shown in exh 'WUU1' dated 26 August 2011 (see encl 76, the affidavit in support) the defendant had been cited as 'Rushdi bin Aminuddin'. At no point in time did the defendant disclose to the plaintiff or the court, his correct name or raise any objection thereto. The letter of administration which was granted to the defendant was also in the name of the defendant as 'Rushdi bin Aminuddin'.

[4] Learned counsel for the defendant has argued that the application to amend the order under the 'slip rule' of O 20 r 11 cannot stand because the error is not a clerical mistake or an error arising from any accidental slip or omission as provided for under r 11.

[5] In *Hock Hua Bank Bhd v Sahari bin Murid* [1981] 1 MLJ 143, the Federal Court held, inter alia, that under any application in the same action, the court had no power to alter, vary or set aside a judgment regularly obtained after it had been entered or an order after it had been drawn up, except under the slip rule, so far as it is necessary to correct errors in expressing the intention of the court, unless it is a judgment by default or made in the absence of a party at the time of hearing.

[6] In this case, the said judgment had been entered for the plaintiff after full trial and the said order, after assessment of damages, had been drawn up. The plaintiffs contend that this application to amend is necessary to express the intention of the court, which is to allow the plaintiffs' claim against the defendant, herein.

[7] I concur with the plaintiffs that this application is necessary to reflect the defendant's correct name as appears in the National Registration Department as the clear intention of the court is to render judgment against the defendant. The mistake as to his correct name was in no small measure attributable to the defendant's own omission to make full disclosure or object to the error in respect of his name. He had from the various affidavits filed in the suit referred to himself as 'Rushdi bin Aminuddin' and described himself as the son of 'Hj Pakeh Amin @ Hj Aminuddin bin Yusuf'. As far as the court is concerned, there is no error in the person of the defendant sued — the defendant appeared in person and defended the suit against him. The parties are related and there is no issue of mistaken identity as the defendant is the stepson of the second plaintiff.

[8] In the circumstances I find that this application is properly made pursuant to O 20 r 11 and that it is necessary to correct the error in respect of the defendant's name so as to express the intention of the court when judgment was given against the defendant in 2004.

[9] Order in terms of encl 77.

Application allowed.

Reported by Afiq Mohamad Noor